

As of 12/2017

**§ 1 Validity of the General Terms and Conditions of Sale and Delivery**

- (1) These Terms and Conditions of Sale and Delivery are applicable to all present and future transactions between Cuyllits Holding GmbH, Culimeta Textilglas-Technologie GmbH & Co. KG, Culimeta Automotive Neunkirchen GmbH and Culimeta Automotive Darmstadt GmbH (hereinafter referred to as: "we" or "us") and customers who have their place of business in the Federal Republic of Germany. This is also the case when we do not expressly refer to the Terms and Conditions of Sale and Delivery again in follow-up business transactions with the customer.
- (2) Only these Terms and Conditions of Sale and Delivery apply. The customer's General Terms & Conditions shall under no circumstances constitute the subject of the contract. This shall not apply even in the event of our knowledge of such or if we do not again expressly contradict this again, unless their applicability is explicitly agreed upon in writing. These Terms and Conditions of Sale and Delivery shall also apply in place of any General Terms & Conditions of the customer (e.g. Purchasing Terms and Conditions) even if the latter stipulate that acceptance of the order shall constitute unconditional acceptance of the customer's General Terms & Conditions.
- (3) These General Terms and Conditions of Sale and Delivery shall not apply if the customer is a consumer within the meaning of Section 13 of the German Civil Code (BGB).
- (4) All offers, deliveries and services on our part shall be effected solely on the basis of these General Terms and Conditions of Sale and Delivery. If we assume additional or more extensive obligations, this shall not affect the validity of these General Terms and Conditions of Sale and Delivery in other respects.

**§ 2 Offer and Conclusion of Contract**

- (1) Our offers are always conditional and non-binding, unless they have been expressly designated as binding or contain a specific acceptance period.
- (2) If a purchase order placed by the customer is to be qualified as an offer in accordance with Section 145 BGB, then we may accept it within two weeks of receiving the purchase order. If the purchase order diverges from our proposals or our offer, then the customer shall set out the purchase order in writing and mark the deviations.
- (3) If the purchase order is placed electronically, we shall usually confirm receipt of the order. This confirmation of receipt merely documents the receipt of the order, and shall not constitute a binding acceptance. However, the declaration of acceptance may be linked to the confirmation of receipt.
- (4) The contract shall only come into effect by virtue of our order confirmation. Our order confirmation shall govern the entire content of the contract. This shall also apply, subject to short-term and written objections raised by the customer, if it diverges from declarations made by the customer.
- (5) As a rule, we send our order confirmations electronically. In addition, we may also send order confirmations in text form or in writing. In the absence of a confirmation of order, the contract shall become effective upon the execution of the order. In addition, public statements, claims or advertisements shall not constitute statements regarding the quality of the goods. The customer shall not receive any guarantees in the legal sense.
- (6) We reserve the right to make technical modifications as well as changes as to the shape, colour and/or weight within the scope of reasonableness, unless the usability for a contractually agreed purpose, where necessary, requires exact conformity. We reserve the right to make changes and improvements with regard to the construction design, use of material and finish, insofar as this does not impair the contractually stipulated or customary use of the subject of the contract. If in the customer's view the goods to be delivered are not to be suitable exclusively for customary use or if the customer assumes a certain suitability of the use of the goods or a certain quality or if the customer plans to use the goods for an unusual purpose, under increased stress or involving a particular risk to life, limb, health or the environment, then he is obliged to point out to us the intended use or relevant expectation in writing prior to concluding the contract.
- (7) We shall retain property rights and copyright in respect of estimates, drawings and other documents. Such documents may not be disclosed to third parties or used for advertising purposes without our express prior written consent. We are entitled to request their surrender by the customer at any time. This shall only apply insofar as the surrender to property is not expressly the subject of the contract.
- (8) Any amendments, modifications or subsidiary agreements to the contract require the written form or our written confirmation to take effect. Our employees, commercial agents or other sales agent are not authorised to make supplementary

agreements or give any representations or guarantees that go beyond the stipulated content of the contract. Nor are they authorised to waive the requirement of an order confirmation.

**§ 3 Prices and Payment**

- (1) Prices apply ex works, exclusive of packaging, loading, transportation and possibly customs, in euro, unless otherwise stated in the order confirmation. The customer warrants that all requirements for a value-added tax-free delivery, from a German perspective, shall be met. Insofar as we do not receive verification of the tax-exempt delivery or if we have to pay value-added tax due to the delivery modalities or due to circumstances outside the customer's sphere, then the customer shall indemnify us from claims in excess of this without restrictions. The indemnity is granted by the customer, waiving any further conditions or other objections, in particular waiving any objection of limitation, and includes compensation for expenses incurred. With regard to any additional charges, reference is made to the provisions laid down in § 4.
- (2) Unless otherwise indicated in the order confirmation, the invoice amount shown shall be due for payment upon the issuance of the invoice. The consequences of any possible default in payment on the part of the customer are commensurate with legal provisions. The customer shall be in default if he does not pay within 7 days from receipt of the invoice.
- (3) If several claims are due, we reserve the right to use a payment, instalment or a deposit made by the customer in order to first discharge the claim that offers the least security, among several claims offering equal security that which is the oldest, and concerning claims of the same age we reserve the right to discharge all these claims partially at the same rate.
- (4) We shall not be obliged to accept bills of exchange or cheques. If they are accepted, this shall only be done subject to clearance of the funds against reimbursement of all fees on account of performance. We shall likewise not be obliged to present a bill of exchange or check in due time or to lodge protests.
- (5) The customer shall only be entitled to offset his debt against claims if his counterclaims have been established as final and conclusive or are due for decision, for the rest, also if the counterclaims have been acknowledged by us or if we have not disputed them. The customer may only exercise a right of retention if his counterclaim is based on the same contractual relationship.
- (6) We reserve the right to adjust our prices accordingly if there are any increases in costs (in particular due to collective agreements or changing prices for materials) after concluding the contract.
- (7) Additional deliveries and services agreed upon after the confirmation of order shall be invoiced separately. Partial deliveries or partial performances shall be paid within the deadlines stated in the order confirmation or invoice or rather these General Terms and Conditions.
- (8) In the event of failing to pay within the periods stated or if circumstances become known to us after concluding the contract that may adversely affect the customer's creditworthiness, all our claims shall immediately become due for payment. We shall then be entitled to require advance payment or the provision of security for any outstanding performances and, after an appropriate period of grace, to withdraw from the contract or claim compensation for non-performance and, without prejudice to the aforementioned rights, to take back the goods delivered subject to retention of title at the customer's expense. If partial payments have been agreed upon and the customer in default, in spite of an appropriate period of grace, then we shall be entitled to withdraw from the contract.
- (9) Unless expressly agreed otherwise, we shall not be obliged to assemble and install goods, to advise the customer or to train or instruct customers. Section 434 (2) BGB is dispensed with. If we provide such services nonetheless on the basis of a separate agreement, these services may be invoiced separately by us.

**§ 4 Transfer of Risk, Packaging, Dispatch**

- (1) Unless otherwise stated in the order confirmation, delivery is agreed to be "ex works" (EXW in accordance with Incoterms 2010). The same shall also apply for any partial deliveries and partial performances that we provide, insofar as we are entitled to provide partial deliveries and partial performances.
- (2) Unless otherwise agreed upon, the cost of packaging, shipment, payment transactions, customs fees, etc. shall be invoiced to the customer separately.

**§ 5 Delivery Times**

- (1) The delivery time is evident from our written order confirmation. Adherence to the delivery time requires that the customer fulfils his contractual duties and obligations as agreed. If this is not the case, then the delivery time shall be extended accordingly, unless we are responsible for the delay. Binding delivery dates or deadlines require our written confirmation to become effective.
- (2) Compliance with the delivery time is subject to the correct and timely delivery by our suppliers, unless we have deliberately or grossly negligently induced the incorrect or late delivery by our suppliers. We shall notify the customer immediately of the non-availability of the goods. Any considerations that may already have been

made shall be reimbursed, unless the customer declares his agreement to the delivery after expiry of the delivery time.

- (3) Delivery dates or deadlines shall be postponed or extended accordingly if we are prevented from providing the service within the time agreed due to force majeure, industrial action or other circumstances for which we are not responsible. The inability to obtain raw material and means of transport shall be treated in the same way as the cases referred to above. This also applies if corresponding circumstances occur concerning upstream suppliers. We shall not be liable for any damages arising from this on any legal grounds. If the impediment exceeds three months, then the customer shall be entitled, following an appropriate period of grace, to withdraw from the contract with regard to the part that has not yet been performed. In this case, he shall not be entitled to any damage claims.
- (4) For the rest, the customer is only entitled to rights and claims due to delay if we are responsible for the delay.
- (5) If the customer incurs damage due to a delay in delivery for which we are responsible, then the statutory provisions shall apply. If we are liable to pay damages thereunder, this shall be limited in amount to 0.5 % for each full week of delay but in total to a maximum of 5% of the value of the part of the total delivery that cannot be used in good time or in conformity with the contract due to the delay. Damage claims in excess of this shall be excluded.
- (6) The limitations set forth above in accordance with Section 5 shall not apply in the event of intent or gross negligence on our part or in the event of a fixed-date transaction or if the delay in delivery for which we are responsible is based on the culpable violation of an essential contractual obligation or if life, limb or health are affected. Except in the case of a wilful contractual infringement for which we are responsible or if life, limb or health are affected, then our liability for damages in such cases shall be limited to foreseeable damage that typically occurs.
- (7) If shipping has been agreed, delivery times, delivery deadlines and delivery dates shall refer to the time of transfer to the forwarder, haulier or to any other third party commissioned with the shipment.
- (8) If delivery is postponed at the customer's request, once a reasonable period of grace that has been set elapses without success, we shall be entitled to dispose of the goods at our discretion and to supply the customer within a reasonably extended deadline. Any storage costs shall be borne by the customer.
- (9) If the customer defaults in accepting performance or culpably breaches any other duty to cooperate, then we shall be entitled to request replacement of any losses sustained, including any possible additional expenditure. If stored by us, the storage costs shall be 0.25% of the invoice amount of the items to be stored for each full week. The right to pursue and provide evidence of additional or lower storage costs is reserved. Further claims of compensation for damages remain reserved; the customer may furnish proof that we incurred no or less damage.
- (10) If the conditions of Section (8) are met, then the risk of accidental loss or deterioration of the purchase item shall pass to the customer at the latest at the time when he is in default of acceptance or payment.
- (11) We shall be entitled to render partial deliveries and partial performances when
  - a) the partial delivery can be used by the customer within the contractual intended use,
  - b) the delivery of the remaining ordered goods is ensured and
  - c) the customer does not incur considerable additional expense or costs as a result, unless we agree to bear such costs.
- (12) Partial deliveries may be invoiced separately. Complaints concerning partial deliveries shall not release the customer from the obligation to accept the remaining delivery of the goods in conformity with the contract.

## § 6 Liability and Damage Compensation

- (1) The customer's rights to claim defects require that he has duly complied with his obligations to inspect the goods and report defects in accordance with Section 377 of the German Commercial Code (HGB). Any notification of defects must be made in writing, stating the type and extent of the deviation from the agreed or customary quality or suitability of use. We shall not be obliged to check whether the goods fulfil the particular purpose intended by the customer or are suitable for doing so, unless the customer has pointed this out to us in writing before concluding the contract.
- (2) A material defect in the goods exists if the goods deviate considerably from the design, quantity, quality and suitability of use agreed upon in the written order confirmation taking into account the provisions in § 2 Sections (1), (4), (5), (6) and (8) or, unless otherwise stipulated, from the quality and suitability of use customary in the Federal Republic of Germany. A defect of title to the goods exists if the goods are not free of rights or claims of third parties enforceable in the Federal Republic of Germany at the time of transfer of risk. Statutory exclusions in excess of this or limitations of our responsibility remain unaffected. Unless otherwise expressly agreed upon in the written order confirmation, we are, in particular, not responsible for the goods being free from rights/claims of third parties outside the Federal Republic of Germany. If we provide the customer with samples or receive such from him, if analyses, DIN [German Industry Standard] provisions, other domestic or international quality standards are designated by us or the customer or if any

other details are given about the quality of the goods, then these shall solely serve the purpose of describing the services to be provided by us in greater detail. No acceptance of a guarantee of quality is associated with this.

- (3) In the event of legitimate notices of defects, the customer may request supplementary performance in accordance with the statutory provisions. Supplementary performance shall take place at our discretion by eliminating the defect or by supplying faultless goods.
- (4) If the supplementary performance definitively fails, then the customer may at his discretion choose to request a reduction in remuneration (reduction) or a cancellation of the contract (withdrawal) in accordance with the statutory provisions.
- (5) We shall only be held liable for damages incurred by the customer arising from a breach of contractual obligations if we are responsible for such damage. In the case of damages caused by simple negligence, we shall only be liable if a material contractual obligation has been violated. Material contractual obligations are those whose fulfilment shapes the contract and in which the customer may trust. Except in the case of a wilful contractual infringement for which we are responsible, our liability amount shall be limited to damages that typically occur and that were foreseeable at the time of concluding the contract. In particular, the replacement of indirect damage such as lost profits or loss of production shall be excluded.
- (6) Liability arising from culpable injury to life, limb or health shall remain unaffected by the aforementioned limitations in accordance with Section 5. This also applies to mandatory liability according to the Product Liability Act, in the context of guarantees and of Section 478 BGB.
- (7) The limitation period for claims for faults is 12 months from the transfer of risk. Damage claims due to intent, gross negligence, in the event of culpable injury to life, limb or health, claims resulting from product liability and under § 478 BGB as well as the statutory limitation period under § 438 (1) No. 2 BGB for defects to objects that have been used for a building in accordance with their customary manner of use and that caused its defectiveness, shall remain unaffected. Subsequent performance measures shall not lead to an extension of the period defined in the first sentence, and shall not imply any acknowledgement that triggers a new start of the limitation period.
- (8) Liability for normal wear and tear as well as damage due to unsuitable or improper use shall be excluded. If operating, safety or maintenance instructions, particularly technical data sheets, are not observed; if changes are made to the products; if parts are replaced or consumables are used that are not compliant with the original specifications, then any liability for defects shall not be applicable if the customer is unable to disprove a substantiated assertion that the defect occurred because of these circumstances.
- (9) We shall not be liable for defects on the part of customer or for parts or components provided by third parties on his behalf or for defects of the end product attributable to the defectiveness of such supply parts.

## § 7 Property Rights

- (1) We provide a guarantee vis-à-vis the customer for the goods being free of property rights of third parties in the Federal Republic of Germany.
- (2) However, the requirement for this provision of guarantee is that the customer shall inform us immediately of claims arising from property rights asserted against him by third parties and shall act in agreement with us when dealing with these claims and pursuing his rights. If one of these requirements is not met, then we shall be released from our legal obligations or any obligations undertaken in these Terms and Conditions. If a breach of property rights arises for which we are liable in accordance with the terms, and if for that reason the customer is forbidden by law to use the goods either completely or partially, then we shall, at our own expense and at our discretion
  - a) procure the customer's right to use the goods or
  - b) create the goods free of property rights or
  - c) replace the goods with another object that does not violate any property rights, or
  - d) take back the goods and refund the consideration paid by the customer.
- (3) Our liability shall not be applicable if the customer makes changes to the goods or blends the goods with other materials, violating the property rights of third parties.
- (4) The customer shall not be entitled to any other claims or claims in excess of this due to the infringement of property rights of third parties. In particular, we shall not replace any consequential damages, such as loss of production or use and lost profits. These liability limitations shall not apply if, in cases of intent or gross negligence or the violation of essential contractual obligations or the absence of assured qualities, mandatory liability is assumed for foreseeable damage typical for the contract.

## § 8 Joint Liability

- (1) Liability for damage compensation in excess of that envisaged under §§ 5, 6 and 7 is excluded, irrespective of the legal grounds.

- (2) Insofar as our liability vis-à-vis the customer is excluded according to these terms, this shall also apply to any personal liability on the part of our representatives, vicarious agents or employees.
- (3) The customer's attention is drawn to Section 254 BGB. In line with this, he undertakes to take appropriate precautions to prevent, as far as possible, any damage from occurring. The obligation laid down in Section 254 BGB shall also be deemed to be an obligation the customer has towards us (within the meaning of Section 280 BGB).

## § 9 Retention of Title

- (1) The goods delivered (goods subject to retention of title) shall remain our property until such time as all claims to which we are or will be entitled against the customer have been settled, including all current account balance claims. If the customer acts in breach of contract – in particular, if he is in default with payment of a claim for payment – we shall be entitled to take back goods subject to retention of title after having set an appropriate period of time for performance. The transport costs incurred for taking back the goods shall be borne by the customer. If we take back the goods subject to retention of title, this shall constitute a withdrawal from the contract. If we levy execution on goods subject to retention of title, this shall likewise constitute a withdrawal from the contract. We may realise goods subject to retention of title that we have taken back. The proceeds from the realisation shall be offset against those amounts owed to us by the customer, after we have deducted an appropriate amount for realisation costs.
- (2) The customer shall treat the goods subject to retention of title with care. He shall adequately insure them against fire and water damage and theft at the original value at his own expense. If maintenance and inspection works are required, the customer shall undertake them in good time at his own expense.
- (3) The customer may use the goods subject to retention of title and resell them in the ordinary course of business, as long as he is not in default of payment. However, he may not levy execution on the goods subject to retention of title or assign them by way of security. Claims for payment by the customer against his buyers arising from the resale of the goods subject to retention of title as well as those claims by the customer with regard to the goods subject to retention of title arising against his buyers or third parties on any other legal grounds (in particular, claims arising from tortious acts and claims to indemnification payments), including all current account balance claims, are fully assigned to us by the customer here and now by way of security. We hereby accept this assignment.
- (4) The customer may collect the claims assigned to us at his expense in its own name for us, as long as we do not revoke this authorisation. Our right to collect these claims ourselves shall not be affected by this; however, we shall not assert the claims ourselves and shall not revoke the authorisation to collect as long as the customer duly complies with his payment obligations.
- (5) If, however, the customer acts in breach of contract – in particular, if he is in default with the payment of a claim for payment – we may request the customer to disclose to us the assigned claims and the respective debtors, to notify the respective debtors of the assignment and to surrender all documents to us and provide us with all of the information we require to assert the claim.
- (6) Any processing or transformation of the goods subject to retention of title by the customer shall always be executed for us. If the goods subject to retention of title are processed with other items that do not belong to us, then we shall acquire co-ownership of the new item in proportion to the value of the goods subject to retention of title (final invoice amount including value-added tax, if applicable) to the other processed goods at the time of processing. Incidentally, the same applies for the new product that results from processing as for the goods subject to retention of title.
- (7) If the goods subject to retention of title are inextricably attached or blended with other items that do not belong to us, then we shall acquire co-ownership of the new item in proportion to the value of the goods subject to retention of title (final invoice amount including value-added tax, if applicable) to the other attached or blended goods at the time of attaching or blending. If the goods subject to retention of title are attached or blended in such a way that the customer's item shall be considered as the main item, then we and the customer already agree that the customer shall transfer proportionate co-ownership of the item to us. We hereby accept this transfer.
- (8) The customer shall take care of the resultant sole ownership or co-ownership of an item for us.
- (9) In the event of the attachment of goods subject to retention of title by third parties or of other intervention by third parties, the customer shall draw attention to our ownership and shall immediately inform us in writing so that we can assert our property rights. If the third party does not reimburse us with the court or out-of-court costs incurred in this connection, the customer shall be liable to pay them.
- (10) At the customer's request, we are obliged to release the securities to which we are entitled insofar as their realisable value exceeds the value of our outstanding claims against the customer by more than 10%. In this connection, however, we may choose the securities to be released.

- (11) In the event of deliveries outside the Federal Republic of Germany that we undertake at the initiative of the customer, and if the aforementioned security rights in rem cannot be effectively agreed, such security rights in rem shall be deemed to have been agreed in respect of all outstanding claims arising from the business relationship between the customer and us which are closest to the above security rights and which are permissible and possible according to the relevant legal system.

## § 10 Final Provisions

- (1) The legal relations are governed by the English version of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Sales Convention/CISG) as well as the customs prevailing in Bersenbrück/Germany. The UN Sales Convention applies above and beyond its area of application and regardless of any reservations of contracting countries for all contracts subject to these International Terms and Conditions of Sale and Delivery. The formation of contract, including agreements as to the jurisdiction of courts and arbitrators, and the rights and obligations of the parties, including pre-contractual and other secondary obligations, as well as their interpretation, are governed exclusively by the UN Sales Convention in conjunction with these International Terms and Conditions of Sale and Delivery. Outside the UN Sales Convention, the legal relations between the parties shall be governed by the law of the Federal Republic of Germany.
- (2) If the customer is a merchant, a legal entity under public law or a federal special fund under public law, then the exclusive place of jurisdiction for all disputes arising from this contract is Bersenbrück. The same applies if the customer has no general jurisdictional venue in Germany or if his place of residence or common whereabouts are not known at the time of commencing an action. However, we are entitled to sue the customer at his place of business, place of residence or commercial branch.
- (3) The place of performance, payment and fulfilment for all obligations arising from the business relationship is the place of business of our respective company, with the exception of Culimeta Automotive Darmstadt GmbH. In this case, it is deemed to be agreed that Darmstadt is the place of performance, payment and fulfilment for all obligations arising from the business relationship. If assembly has been agreed upon, then the place of performance shall be the place of assembly.
- (4) If any provisions of the contract with the customer, including these General Terms and Conditions of Sale and Delivery, are or become invalid, either in full or in part, then this shall not affect the validity of the remaining provisions. The partially or wholly invalid provision shall be replaced by a provision whose economic success comes closest to that of the invalid provision.